

970242



State of New Jersey

Department of Environmental Protection
Land Use Regulation Program

P O Box 439

501 East State Street

Trenton, NJ 08625-0439

Fax: (609) 292-8115

www.state.nj.us/dep/landuse

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

OCT 23 2003

Mr. Alan Hermely
URS Corporation
671 Moore Road
King of Prussia, PA 19406-1318

RE: Authorization for Freshwater Wetlands Statewide General Permit No. 7

LURP File No.: 1316-03-0008.1 FWW 030001

Applicant: New Jersey Department of Transportation

Block: N/A; Lot: N/A

Location: Route 9 & C.R. 524

Freehold Township, Monmouth County

Dear Mr. Hermely:

The Land Use Regulation Program has reviewed the referenced application for a Statewide General Permit authorization pursuant to the requirements of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:27A. The proposed activities are authorized by Statewide General Permit No. 7, which authorizes activities in ditches of human construction or in swales.

Limit of Authorized Disturbance

The authorized work is shown on the plan sheets entitled as follows:

1. Set of 15 construction plan sheets all entitled:

"NEW JERSEY DEPARTMENT OF TRANSPORTATION, CONSTRUCTION PLANS, ROUTE 9 & 524, CONTRACT NO. 111970242",

Sheets C-1, C-4, C-7 through C-9, C-11 through C-14, dated May 1, 2003; and,

Sheets C-2, C-3, C-5, C-6, C-10 and C-15, dated May 27, 2003.

All plans prepared by Arthur Jay Eisdorfer, licensed professional engineer.

2. Set of 12 drainage, soil erosion and sediment control plans:

"NEW JERSEY DEPARTMENT OF TRANSPORTATION, DRAINAGE, SOIL EROSION & SEDIMENT CONTROL PLANS, ROUTE 9 & 524, CONTRACT NO. 111970242",

All sheets dated May 1, 2003, and all prepared by Arthur Jay Eisdorfer, licensed professional engineer.

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LURP File No.: 1316-03-0008.1 FWW 030001

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Any additional disturbance of freshwater wetlands, State open waters or transition area shall be considered a violation of the Freshwater Wetlands Protection Act unless the activity is exempt or a permit is obtained prior to the start of the disturbance from the Land Use Regulation Program.

Permit Conditions

The activities allowed by this authorization shall comply with the following conditions. Failure to comply with these conditions shall constitute a violation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

Special Conditions

1. The total amount of disturbance authorized by this permit shall not exceed 0.125 acres. Sheet C-10 0.125 acres of a SOW/ditch
2. As per Section 7:7A-4.3(b)8 of the Freshwater Wetlands Protection Act Rules, during construction activities, all excavation must be monitored for the presence of **acid-producing deposits**. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and shall establish an annual post-planting monitoring program to ensure the reestablishment of vegetation in temporarily disturbed areas. The plantings shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. If the plantings fail to achieve this survival rate, the Department will require the permittee to implement additional corrective measures

In addition to the above conditions and the conditions noted at N.J.A.C. 7:7A-4 and -13, the following general conditions must be met for the activity authorized under this Statewide General Permit:

General conditions:

1. All fill and other earth work on the lands encompassed within this permit authorization shall be stabilized in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey" to prevent eroded soil from entering adjacent waterways or wetlands at any time during and subsequent to construction.
2. This permit is revocable in accordance with DEP regulations and State law.
3. The issuance of this permit shall not be deemed to affect in any way other actions by the Department on any future application.
4. The activities shown on the approved plans shall be constructed and/or executed in conformity with any notes and details on said plans and any conditions stipulated herein.
5. No change in plans or specifications shall be made except with the prior written permission of the Department.

(General Conditions continued)

6. The granting of this authorization shall not be construed to in any way affect the title or ownership of the property, and shall not make the Department or the State a party in any suit or question of ownership of the property.
7. This permit is not valid and no work shall be undertaken pursuant to this authorization until all other required federal, state, and local approvals, licenses and permits necessary for commencement of work onsite have been obtained.
8. A complete, legible copy of this permit shall be kept at the work site and shall be exhibited upon request of any person.
9. The permittee shall allow the Program the right to inspect the construction site and also shall provide the Bureau of Coastal and Land Enforcement, NJDEP with written notification 7 days prior to the start of the authorized work.
10. This authorization is valid for five years from the date of this letter unless more stringent standards are adopted by rule prior to this date.

Transition Area

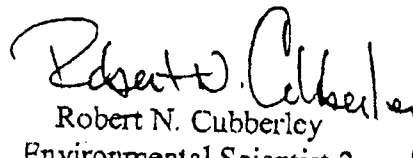
The feature(s) affected by this permit authorization is of ordinary resource value. As per N.J.A.C. 7:7A-2.5(c) no standard transition area or buffer is required adjacent to this feature.

Appeal of Decision

In accordance with N.J.A.C. 7:7A-1.7, any person who is aggrieved by this decision may request a hearing within 30 days of the decision date by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist.

If you have any questions regarding this authorization, please contact Evelyn M. Hall of our staff at (609)984-0194. Please reference the above file number.

Sincerely,


Robert N. Cubberley
Environmental Scientist 2
Bureau of Inland Regulation

- c. Bureau of Enforcement
Freehold Township Municipal Clerk
Freehold Township Municipal Construction Official
Robert Verner, NJDOT, PO Box 600

James E. McGreevey
Governor



State of New Jersey
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www.state.nj.us/dcp/landuse

Bradley M. Campbell
Commissioner

OCT 23 2003

Mr. Alan Hermely
URS Corporation
671 Moore Road
King of Prussia, PA 19406-1318

RE: Authorization for Freshwater Wetlands Statewide General Permit No. 10B
LURP No.: 1316-03-0008.1 FWW 030002
Applicant: New Jersey Department of Transportation
Block: N/A; Lot: N/A
Location: Route 9 & C.R. 524
Freehold Township, Monmouth County

Dear Mr. Hermely

The Land Use Regulation Program has reviewed the referenced application for Statewide General Permit authorizations pursuant to the requirements of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:27A. The proposed activities are authorized by Statewide General Permit No. 10, which authorizes construction of minor road crossings.

Limit of Authorized Disturbance

The authorized work is shown on the plan sheets entitled as follows:

1. Set of 15 construction plan sheets all entitled:
"NEW JERSEY DEPARTMENT OF TRANSPORTATION, CONSTRUCTION PLANS,
ROUTE 9 & 524, CONTRACT NO. 111970242",
Sheets C-1, C-4, C-7 through C-9, C-11 through C-14, dated May 1, 2003; and,
Sheets C-2, C-3, C-5, C-6, C-10 and C-15, dated May 27, 2003.
All plans prepared by Arthur Jay Eisdorfer, licensed professional engineer.
2. Set of 12 drainage, soil erosion and sediment control plans:
"NEW JERSEY DEPARTMENT OF TRANSPORTATION, DRAINAGE, SOIL EROSION &
SEDIMENT CONTROL PLANS, ROUTE 9 & 524, CONTRACT NO. 111970242",
All sheets dated May 1, 2003, and all prepared by Arthur Jay Eisdorfer, licensed professional engineer.

Any additional disturbance of freshwater wetlands, State open waters or transition area shall be considered a violation of the Freshwater Wetlands Protection Act unless the activity is exempt or a permit is obtained prior to the start of the disturbance from the Land Use Regulation Program.

Permit Conditions

The activities allowed by this authorization shall comply with the following conditions. Failure to comply with these conditions shall constitute a violation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

Special Conditions

1. The total amount of disturbance authorized by this permit shall not exceed 0.195 acres of State open waters, freshwater wetlands and transition areas as follows:
 - Sheet C-2 0.010 acres of transition area (150 ft. presumed)
 - Sheet C-10 0.130 acres of SOW / FWW (50 ft.)
 - Sheet C-15 0.055 acres of transition area (150 ft. presumed)
2. As per Section 7:7A-4.3(b)8 of the Freshwater Wetlands Protection Act Rules, during construction activities, all excavation must be monitored for the presence of **acid-producing deposits**. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and shall establish an annual post-planting monitoring program to ensure the reestablishment of vegetation in temporarily disturbed areas. The plantings shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. If the plantings fail to achieve this survival rate, the Department will require the permittee to implement additional corrective measures.
3. As per the United States Fish and Wildlife Service (Service), NJDOT shall conduct a Phase II bog turtle survey (including trapping) prior to any work being started within 300 feet of the potential turtle habitat.
4. As per the Service, the footprint of the work area shall be minimized to the maximum extent practicable.
5. As per the Service, the work area adjacent to the bog turtle habitat shall be isolated with an exclusion fence (silt fence) buried to a minimum depth of 12 inches below grade to prevent any accidental entry of bog turtles within the work area.
6. As per the Service, super silt fencing shall be installed and maintained daily in the areas adjacent to freshwater wetlands and state open waters.
7. As per the Service, the work area adjacent to the potential bog turtle habitat shall be visually surveyed prior to and during construction activities. Any bog turtles observed during surveys must be immediately removed from the work area and relocated to adjacent suitable habitat outside of the construction area, preferably to an area that would not allow the turtle to reenter the construction area. If bog turtles are found, notify the Service within 24 hours.

In addition to the above conditions and the conditions noted at N.J.A.C. 7:7A-4 and -13, the following general conditions must be met for the activity authorized under this Statewide General Permit:

General conditions:

1. All fill and other earth work on the lands encompassed within this permit authorization shall be stabilized in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey" to prevent eroded soil from entering adjacent waterways or wetlands at any time during and subsequent to construction.
2. This permit is revocable in accordance with DEP regulations and State law.
3. The issuance of this permit shall not be deemed to affect in any way other actions by the Department on any future application.
4. The activities shown on the approved plans shall be constructed and/or executed in conformity with any notes and details on said plans and any conditions stipulated herein.
5. No change in plans or specifications shall be made except with the prior written permission of the Department.
6. The granting of this authorization shall not be construed to in any way affect the title or ownership of the property, and shall not make the Department or the State a party in any suit or question of ownership of the property.
7. This permit is not valid and no work shall be undertaken pursuant to this authorization until all other required federal, state, and local approvals, licenses and permits necessary for commencement of work onsite have been obtained.
8. A complete, legible copy of this permit shall be kept at the work site and shall be exhibited upon request of any person.
9. The permittee shall allow the Program the right to inspect the construction site and also shall provide the Bureau of Coastal and Land Use Enforcement, NJDEP with written notification 7 days prior to the start of the authorized work.
10. This authorization is valid for five years from the date of this letter unless more stringent standards are adopted by rule prior to this date.

Transition Area

The wetlands affected by this permit authorization are, at minimum, of intermediate resource value and the standard transition area or buffer required is 50 feet. It may be determined that wetlands "S", "SS", "T" and "U" are of exceptional resource value. The exceptional resource value classification may be necessary due to a bog turtle occurrence within 0.83 miles of the project site. The transition areas on sheets C-2 and C-10 of 15 referenced above are presumed to be 150 feet and the authorized disturbances correspond to that presumption. This General Permit includes a transition area waiver that allows encroachment only in that portion of the transition area that has been determined by the Department to be necessary to accomplish the regulated activities. Any additional regulated activities conducted within the standard transition area on-site shall require a separate transition area waiver from the Program. Regulated activities within a transition area are defined at N.J.A.C. 7:7A-6.2(a).

LURP File No.: 1316 03-0008.1 FWW 030002

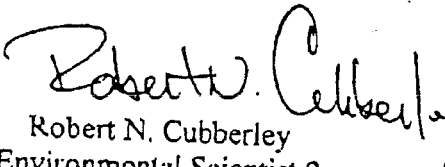
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Appeal of Decision

In accordance with N.J.A.C. 7:7A-12.7, any person who is aggrieved by this decision may request a hearing within 30 days of the decision date by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist.

If you have any questions regarding this authorization, please contact Evelyn M. Hall of our staff at (609)984-0194. Please reference the above file number.

Sincerely,


Robert N. Cubberley
Environmental Scientist 2
Bureau of Inland Regulation

- c. Bureau of Enforcement
Freehold Township Municipal Clerk
Freehold Township Municipal Construction Official
Robert Verner, NJDOT, PO Box 600

Attachment: USFWS (Service) Comments/Conditions Sheet

ATTACHMENT

Comments/Conditions

LURP File No. 1316-03-0008.1

The U.S. Fish and Wildlife Service has reviewed the subject New Jersey Freshwater Wetland Permit Application for the New Jersey Department of Transportation (NJDOT) (applicant). The applicant proposes improvements for the Route 9 and CR 524 intersection, including an additional lane and reverse jug-handles in Freehold Township, Monmouth County, New Jersey.

New Jersey Endangered and Nongame Species Program biologists documented a bog turtle (*Clemmys muhlenbergii*) occurrence within 0.83 mile of the proposed project site. Bog turtles inhabit open, wet meadows and bogs with standing or slow-moving shallow water over a mucky substrate (Bourg, 1992). Bog turtles also occur in emergent and shrub/scrub wetlands and spring-fed fens. The bog turtle is federally listed as threatened pursuant to the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). Based upon the documented bog turtle occurrence in the vicinity of the project, the Service requested that the applicant conduct a habitat survey to determine the presence/absence of potentially suitable bog turtle habitat on site and 500 feet into any adjacent freshwater wetlands. The Service received the survey results on August 13, 2003. The results of the Phase I bog turtle survey indicate that suitable bog turtle habitat is located adjacent to the proposed project site. The Service concurs with the results of the survey.

On September 17, 2003, the Service met with representatives from NJDOT and New Jersey Department of Environmental Protection Land Use Regulation Program (LURP) to discuss project plans and conduct a site visit. Based upon information received and observed during the site visit the Service requests that the LURP incorporate the following conditions be into the authorized State general permit for the protection of the bog turtle:

- NJDOT shall conduct a Phase II bog turtle survey (including trapping) prior to any work being started within 300 feet of the potential bog turtle habitat.
- NJDOT shall submit for Service approval a plan to correct and improve the concrete swale located adjacent to the bog turtle habitat. Improvements to the swale will include re-vegetating the area to improve water quality.
- The footprint of the work area shall be minimized to the maximum extent practicable.
- The work area adjacent to the bog turtle habitat shall be isolated with an exclusion fence (silt fence) buried to a minimum depth of 12 inches below grade to prevent any accidental entry of bog turtles within the work area.

The Service is available for further coordination to ensure that project activities will not adversely affect the above species. If the applicant is unable to conduct the surveys for bog turtle, federal review of this proposed project will be necessary. These conditions may be amended based on the results of the Phase II bog turtle survey. Please contact Darren Harris at (609) 646-9310, extension 44, should you have any question regarding this correspondence. Please refer to control number PL-NJ-03/289. Additionally, please forward a copy of the authorized permit to this office when completed.

Reference

Bourg, N.A. 1992. Status of the bog turtle (*Clemmys muhlenbergii*) in North America. Eastern Heritage Task Force of the Nature Conservancy, Middletown, Pennsylvania. Report to the U.S. Fish and Wildlife Service. 33 pp.



State of New Jersey

Department of Environmental Protection
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Bradley M. Campbell
Commissioner

James E. McGreevey
Governor

Mr. Alan Hermely
URS Corporation
671 Moore Road
King of Prussia, PA 19406-1318

OCT 23 2003

RE: Authorization for Freshwater Wetlands Statewide General Permit No. 11
LURP File No.: 1316-03-0008.1 FWW 030003

Applicant: New Jersey Department of Transportation

Block: N/A; Lot: N/A

Location: Route 9 & C.R. 524

Freehold Township, Monmouth County

Dear Mr. Hermely:

The Land Use Regulation Program has reviewed the referenced application for Statewide General Permit authorizations pursuant to the requirements of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. The proposed activities are authorized by Statewide General Permit No. 11, which authorizes outfall and intake structures, non-public water systems, conveyance and energy dissipation structures in freshwater wetlands, transition areas and State open waters.

Limit of Authorized Disturbance

The authorized work is shown on the plan sheets entitled as follows:

1. Set of 15 construction plan sheets all entitled:
"NEW JERSEY DEPARTMENT OF TRANSPORTATION, CONSTRUCTION PLANS,
ROUTE 9 & 524, CONTRACT NO. 111970242",
Sheets C-1, C-4, C-7 through C-9, C-11 through C-14, dated May 1, 2003; and,
Sheets C-2, C-3, C-5, C-6, C-10 and C-15, dated May 27, 2003.
All plans prepared by Arthur Jay Eisdorfer, licensed professional engineer.
2. Set of 12 drainage, soil erosion and sediment control plans:
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SEDIMENT CONTROL PLANS, ROUTE 9 & 524, CONTRACT NO. 111970242",
All sheets dated May 1, 2003, and all prepared by Arthur Jay Eisdorfer, licensed professional engineer.

Any additional disturbance of freshwater wetlands, State open waters or transition area shall be considered a violation of the Freshwater Wetlands Protection Act unless the activity is exempt or a permit is obtained prior to the start of the disturbance from the Land Use Regulation Program.

Permit Conditions

The activities allowed by this authorization shall comply with the following conditions. Failure to comply with these conditions shall constitute a violation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

Special Conditions

1. The total amount of disturbance authorized by this permit shall not exceed 0.012 acres of State open waters as follows:
Sheet C-3 0.001 acres (SOW)
Sheet C-10 0.011 acres (SOW)
2. No riprap or other energy dissipating material is proposed in conjunction with the outfall, therefore none is authorized.
3. As per Section 7:7A-4.3(b)8 of the Freshwater Wetlands Protection Act Rules, during construction activities, all excavation must be monitored for the presence of **acid-producing deposits**. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and shall establish an annual post-planting monitoring program to ensure the reestablishment of vegetation in temporarily disturbed areas. The plantings shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. If the plantings fail to achieve this survival rate, the Department will require the permittee to implement additional corrective measures.
4. As per the United States Fish and Wildlife Service (Service), NJDOT shall conduct a Phase II bog turtle survey (including trapping) prior to any work being started within 300 feet of the potential turtle habitat.
5. As per the Service, the footprint of the work area shall be minimized to the maximum extent practicable.
6. As per the Service, the work area adjacent to the bog turtle habitat shall be isolated with an exclusion fence (silt fence) buried to a minimum depth of 12 inches below grade to prevent any accidental entry of bog turtles within the work area.
7. As per the Service, super silt fencing shall be installed and maintained daily in the areas adjacent to freshwater wetlands and state open waters.
8. As per the Service, the work area adjacent to the potential bog turtle habitat shall be visually surveyed prior to and during construction activities. Any bog turtles observed during surveys must be immediately removed from the work area and relocated to adjacent suitable habitat outside of the construction area, preferably to an area that would not allow the turtle to reenter the construction area. If bog turtles are found, notify the

In addition to the above conditions and the conditions noted at N.J.A.C. 7:27A-4 and -13, the following general conditions must be met for the activity authorized under this Statewide General Permit:

General conditions:

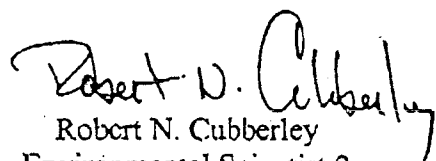
1. All fill and other earth work on the lands encompassed within this permit authorization shall be stabilized in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey" to prevent eroded soil from entering adjacent waterways or wetlands at any time during and subsequent to construction.
2. This permit is revocable in accordance with DEP regulations and State law.
3. The issuance of this permit shall not be deemed to affect in any way other actions by the Department on any future application.
4. The activities shown on the approved plans shall be constructed and/or executed in conformity with any notes and details on said plans and any conditions stipulated herein.
5. No change in plans or specifications shall be made except with the prior written permission of the Department.
6. The granting of this authorization shall not be construed to in any way affect the title or ownership of the property, and shall not make the Department or the State a party in any suit or question of ownership of the property.
7. This permit is not valid and no work shall be undertaken pursuant to this authorization until all other required federal, state, and local approvals, licenses and permits necessary for commencement of work onsite have been obtained.
8. A complete, legible copy of this permit shall be kept at the work site and shall be exhibited upon request of any person.
9. The permittee shall allow the Program the right to inspect the construction site and also shall provide the Bureau of Coastal and Land Use Enforcement, NJDEP with written notification 7 days prior to the start of the authorized work.
10. This authorization is valid for five years from the date of this letter unless more stringent standards are adopted by rule prior to this date.

Appeal of Decision

In accordance with N.J.A.C. 7:7A-12.7, any person who is aggrieved by this decision may request a hearing within 30 days of the decision date by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist.

If you have any questions regarding this authorization, please contact Evelyn M. Hall of our staff at (609)984-0194. Please reference the above file number.

Sincerely,


Robert N. Cubberley
Environmental Scientist 2
Bureau of Inland Regulation

- c. Bureau of Enforcement
- Freehold Township Municipal Clerk
- Freehold Township Municipal Construction Official
- Robert Verner, NJDOT, PO Box 600

Attachment: USFWS (Service) Comments/Conditions Sheet

ATTACHMENT

Comments/Conditions

LURP File No. 1316-03-0008.1

The U.S. Fish and Wildlife Service has reviewed the subject New Jersey Freshwater Wetland Permit Application for the New Jersey Department of Transportation (NJDOT) (applicant). The applicant proposes improvements for the Route 9 and CR 524 intersection, including an additional lane and reverse jug-handles in Freehold Township, Monmouth County, New Jersey.

New Jersey Endangered and Nongame Species Program biologists documented a bog turtle (*Clemmys muhlenbergii*) occurrence within 0.83 mile of the proposed project site. Bog turtles inhabit open, wet meadows and bogs with standing or slow-moving shallow water over a mucky substrate (Bourg, 1992). Bog turtles also occur in emergent and shrub/scrub wetlands and spring-fed fens. The bog turtle is federally listed as threatened pursuant to the Endangered Species Act of 1973 (87 Stat. 884; 16 U.S.C. 1531 *et seq.*). Based upon the documented bog turtle occurrence in the vicinity of the project, the Service requested that the applicant conduct a habitat survey to determine the presence/absence of potentially suitable bog turtle habitat on site and 500 feet into any adjacent freshwater wetlands. The Service received the survey results on August 13, 2003. The results of the Phase I bog turtle survey indicate that suitable bog turtle habitat is located adjacent to the proposed project site. The Service concurs with the results of the survey.

On September 17, 2003, the Service met with representatives from NJDOT and New Jersey Department of Environmental Protection Land Use Regulation Program (LURP) to discuss project plans and conduct a site visit. Based upon information received and observed during the site visit the Service requests that the LURP incorporate the following conditions be into the authorized State general permit for the protection of the bog turtle:

- NJDOT shall conduct a Phase II bog turtle survey (including trapping) prior to any work being started within 300 feet of the potential bog turtle habitat.
- NJDOT shall submit for Service approval a plan to correct and improve the concrete swale located adjacent to the bog turtle habitat. Improvements to the swale will include re-vegetating the area to improve water quality.
- The footprint of the work area shall be minimized to the maximum extent practicable.
- The work area adjacent to the bog turtle habitat shall be isolated with an exclusion fence (silt fence) buried to a minimum depth of 12 inches below grade to prevent any accidental entry of bog turtles within the work area.

- Super silt fencing shall be installed and maintained daily in the areas adjacent to freshwater wetlands and state open waters.
- The work area adjacent to the potential bog turtle habitat shall be visually surveyed prior to and during construction activities. Any bog turtles observed during surveys must be immediately removed from the work area and relocated to adjacent suitable habitat outside of the construction area, preferably to an area that would not allow the turtle to re-enter the construction area. If bog turtles are found, notify the Service within 24 hours.

The Service is available for further coordination to ensure that project activities will not adversely affect the above species. If the applicant is unable to conduct the surveys for bog turtle, federal review of this proposed project will be necessary. These conditions may be amended based on the results of the Phase II bog turtle survey. Please contact Darren Harris at (609) 646-9310, extension 44, should you have any question regarding this correspondence. Please refer to control number PL-NJ-03/289. Additionally, please forward a copy of the authorized permit to this office when completed.

Reference

Bourg, N.A. 1992. Status of the bog turtle (*Clemmys muhlenbergii*) in North America. Eastern Heritage Task Force of the Nature Conservancy, Middletown, Pennsylvania. Report to the U.S. Fish and Wildlife Service. 33 pp.

Prepared by:

NJDEP

File No. _____

DECLARATION OF RESTRICTION FOR MODIFIED TRANSITION AREA

The Declaration of Deed Restriction is made this _____ day of _____, 20____, by

_____ having an office at or residing at _____

_____ hereinafter referred to as "Declarant."

WITNESSETH

Whereas, the Declarant is the owner of certain real property located in the Township of _____ County, New Jersey, designated as Lot _____, Block _____, on the official Tax Map of the Township of _____ (hereinafter "the Property"); and

Whereas, wetlands play a significant role in the maintenance of environmental quality on a community, regional, and statewide level; and

Whereas, wetlands transition areas are integral portions of a freshwater wetlands ecosystem; and

Whereas, the Declarant has obtained a Freshwater Wetlands Transition Area Waiver ("TA Waiver") # _____ FWW _____, which establishes a modified transition area, from the New Jersey Department of Environmental Protection ("DEP") pursuant to the Freshwater Wetlands Protection Act ("FWPA"), N.J.S.A. 13:9B-1 et. seq.; and

Whereas, the TA Waiver issued to the declarant is conditioned upon the Declarant's recording of a Department approved deed restriction, pursuant to N.J.A.C. 7:7A-6.1(h), for the modified transition area more particularly described on attachment A (hereinafter metes and bounds description of the "Modified Transition Area"), and upon the imposition by the Declarant of a deed restriction to preclude subsequent development

Declaration of Restriction on Modified
Transition Area (Project Name)

Page 2 of 5

____ Township, _____ County

of the Modified Transition Area without prior Department approval as outlined below;
and

Whereas, the Declarant desires and intends to restrict subsequent development of the Modified Transition Area in accordance with the covenants, conditions, and restrictions set forth herein;

Now therefore, in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the Freshwater Wetlands Act, N.J.S. A. 13:9B-1 et seq., and associated regulations, N.J.A.C. 7:7A-1 et seq., the Declarant, for itself, its successors and assigns, hereby covenants and agrees with the State of New Jersey, Department of Environmental Protection that the modified transition area is hereby made and declares to be subject in perpetuity to the following covenants and restrictions:

1. The following activities shall not occur within the Modified Transition Area, unless the Department makes the findings specified below.
 - (a) Removal, excavation, or disturbance of the soil;
 - (b) Dumping or filling with any materials;
 - (c) Erection of structures;
 - (d) Placement of pavements; and;
 - (e) Destruction of plant life which would alter the existing pattern of vegetation;
 - (f) Any other activities constituting a regulated activity under N.J.A.C. 7:7A-2.6, as amended.
2. These activities shall only occur if the Department finds:
 - (a) There is compelling public need for the activity greater than the need to protect the modified transition area;
 - (b) That the activity has no practicable alternative which would;
 - i. Not involve a transition area;
 - ii. Involve a transition area but would have less adverse impact on the transition area and the adjacent wetland;
 - iii. Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal.
3. The covenants and restrictions set forth herein shall run with the land and be binding in perpetuity upon the Declarant, its successors and assigns, in perpetuity, and all parties having or acquiring any right, title or interest in the property or any part thereof. Notice of this deed restriction shall be given to all holders of any easements in the Modified Transition Area by the Declarant within 30 days of recording by the County Clerk.

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_____ Township, _____ County

4. It is the purpose of the Declaration to assure that the modified transition area will be maintained as such and to prevent any disturbance or development of the property. To carry out this purpose, the following rights are granted to the State of New Jersey, Department of Environmental Protection by this Declaration:
 - (a) To enter upon the property in a reasonable manner and at reasonable times so as to assure compliance with the provisions of said restrictions.
 - (b) In addition to the exercise of any other statutory or common law right, to enjoin any activity on, or use of, the property that is inconsistent with the purpose of these conservation restrictions and to enforce the restoration of such areas or features of the property that may be damaged by inconsistent activity or use.
5. The Declarant intends that enforcement of the terms and provisions of the deed restriction shall be at the discretion of the State of New Jersey and that any forbearance on behalf of the State of New Jersey to exercise its rights hereunder in the event of any breach hereof by the Declarant, its successors or assigns, shall not be deemed or construed to be a waiver of the State's rights granted hereunder in the event of any subsequent breach. This shall be true regardless of the number of breaches of the restriction, condition or covenant which occur, or the length of time it remains unenforced.
6. The Declarant reserves to itself, its successors or assigns, all rights as to owners of the property, including the right to engage in all uses of the property not inconsistent with the purpose of these restrictions and the right to the property in accordance with N.J.A.C. 7:7A-2.6(b).
7. No additional right of access by the general public to any portion of the property is conveyed by this instrument.
8. The Declarant agrees to bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the property. The Declarant shall be responsible for acts of its own negligence consistent with the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq.
9. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor in interest.
10. The Declarant agrees that the terms, conditions, restrictions and purposes of this instrument will be inserted in any subsequent deed, lease, sub-lease or

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other legal instrument by which the Declarant divests itself of any interest in the property.

11. The NJDEP agrees that it will assign its rights under this instrument only to another governmental body or a charitable conservancy, and only in accordance with N.J.S.A. 13:8B-1 et seq. and N.J.S.A. 13:9B-1 et seq.
12. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of the NJDEP, its successor or assign.
13. If any provision of this Declaration or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of the Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
14. This declaration of restriction shall survive any merger of the fee and restriction interest in the deed restricted areas.

To Have and to Hold unto the New Jersey Department of Environmental Protection, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this declaration shall not only be binding upon the Declarant but also upon its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the property.

In Witness Whereof, the Declarant has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the _____ County Clerk.

_____ (Declarant)

_____ (signature names and title)

ATTEST:

_____, Secretary

Declaration of Restriction on Modified
Transition Area (Project Name)
Township, County

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(Seal)

STATE OF (fill in name)
COUNTY OF (fill in name)

Be it remembered that on this _____ day of _____, 20____, before
me, the subscriber, a Notary Public of New Jersey, personally appeared :
_____, and he thereupon acknowledged that he
signed the foregoing instrument in such capacity, [optional language to be inserted if the
deed restriction is being filed by a corporation] (that the seal affixed to said instrument is
the corporate seal of said corporation), and that said instrument is the voluntary act of
deed of said corporation or person, [optional language to be inserted if the deed restriction
is being filed by a corporation] (made by virtue of authority from its Board of Directors.)

A Notary Public of _____

My Commission Expires: _____